

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:CORP:B05

PLR-122375-19

Date:

March 11, 2020

Legend

Parent =

Sub 1 =

Acquiring =

Former Parent =

Target =

Date 1 =

Date 2 =

Company Official =

Tax Professional =

Dear :

This letter responds to a letter dated September 18, 2019, submitted on behalf of Parent, requesting an extension of time under §301.9100-3 of the Procedure and Administration Regulations to file an election. The extension is being requested for Parent Group to file an election under §1.1502-21(b)(3)(ii)(B) of the Income Tax Regulations to relinquish, with respect to all consolidated net operating losses (“CNOLs”) attributable to Target, the portion of the carryback period for which Target was a member of another group (the “Election”). Additional information was submitted subsequently. The material information submitted for consideration is summarized below.

Parent is the common parent of an affiliated group of corporations that file a consolidated federal income tax return (the “Parent Group”). Sub 1 is a member of the Parent Group.

Prior to Date 1, Former Parent owned all the stock of Target, and Former Parent and Target were included in the consolidated federal income tax return of Former Parent (the “Former Parent Group”). Sub 1 formed Acquiring to acquire Target. On Date 1, Acquiring purchased 100% of the outstanding stock of Target from Former Parent and Acquiring merged into Target with Target surviving.

Parent and its includible subsidiaries (which included Sub 1 and Target) filed a consolidated federal income tax return for Parent’s taxable year ending Date 2. The Election was due by the due date of Parent’s tax return for the taxable year ending Date 2, but for various reasons a valid election was not filed. Subsequently, this request was submitted under §301.9100-3 for an extension of time to file the Election. The period of limitations on assessment under section 6501(a) has not expired for Parent’s taxable year in which the Election should have been filed or for any subsequent taxable years.

It has been represented that no loss attributable to Target available for carryback to the Former Parent Group has ever been used nor will be used by the Former Parent Group.

Section 1.1502-21(b)(3)(ii)(B) provides that if one or more members of a consolidated group become members of another consolidated group, the acquiring consolidated group may elect to relinquish, with respect to all CNOLs attributable to the member, the portion of the carryback period for which the corporation was a member of another group. This election is available provided that any other corporation joining the acquiring group that was affiliated with the member immediately before it joined the acquiring group is also included in the waiver. This election is not a yearly election and applies to all losses that would otherwise be subject to a carryback to a former group under section 172.

Under §301.9100-1(c), the Commissioner has discretion to grant a reasonable extension of time to make a regulatory election, or a statutory election (but no more than six months except in the case of a taxpayer who is abroad), under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Sections 301.9100-1 through 301.9100-3 provide the standards the Commissioner will use to determine whether to grant an extension of time to make a regulatory election. Section 301.9100-1(a). Section 301.9100-2 provides automatic extensions of time for making certain elections. Section 301.9100-3 provides extensions of time for making certain elections that do not meet the requirements of §301.9100-2. Requests for relief under §301.9100-3 will be granted when the taxpayer provides evidence to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and that granting relief will not prejudice the interests of the government. Section 301.9100-3(a).

In this case, the time for filing the Election is fixed by regulations (*i.e.*, §1.1502-21(b)(3)(ii)(B)). Therefore, the Commissioner has discretionary authority under §301.9100-3 to grant an extension of time for Parent Group to file the Election, provided Parent Group shows it acted reasonably and in good faith, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government.

Information, affidavits, and representations submitted by Parent, Company Official, and Tax Professional explain the circumstances that resulted in the failure to timely file a valid Election. The information establishes that the request for relief was filed before the failure to make the Election was discovered by the Internal Revenue Service. See §301.9100-3(b)(1)(i).

Based on the facts and information submitted, including the representations made, we conclude that Parent Group has established that it acted reasonably and in good faith in failing to timely file the Election, the requirements of §§301.9100-1 and 301.9100-3 are satisfied, and granting relief will not prejudice the interests of the government. Accordingly, we grant an extension of time under §301.9100-3, until 45 days from the date on this letter, for Parent Group to file the Election.

Parent Group should file the Election in accordance with §1.1502-21(b)(3)(ii)(B). Parent Group's return must be amended to attach the election statement required by §1.1502-21(b)(3)(ii)(B). A copy of this letter should be attached to the Election statement. Alternatively, if Parent Group files the return electronically, Parent Group may satisfy this requirement by attaching a statement to the return that provides the date on, and control number of (PLR-122375-19), this letter ruling.

The above extension of time is conditioned on Parent Group's and Former Parent Group's tax liability (if any) not being lower, in the aggregate, for all years to which the Election applies, than it would have been if the Election had been timely made (taking into account the time value of money). No opinion is expressed as to the taxpayers' tax liability for the years involved. A determination thereof will be made upon audit of the federal income tax returns involved.

Except as expressly provided herein, no opinion is expressed or implied concerning the tax consequences of any aspect of any transaction or item discussed or referenced in this letter. In addition, we express no opinion as to the tax consequences of filing the Election late under the provisions of any other section of the Code and regulations, or as to the tax treatment of any conditions existing at the time of, or resulting from, filing the Election late that are not specifically set forth in the above ruling. For purposes of granting relief under §301.9100-3, we relied on certain statements and representations made by Parent, Company Official, and Tax Professional. However, all essential facts must be verified. In addition, notwithstanding that an extension is granted under §301.9100-3 to file the Election, penalties and interest that would otherwise be applicable, if any, continue to apply.

This letter is directed only to the taxpayer requesting it. Section 6110(k)(3) provides that it may not be used or cited as precedent.

In accordance with the Power of Attorney on file with this office, a copy of this letter is being sent to your authorized representatives.

Sincerely,

T. Ian Russell
Chief, Branch 1
Office of Associate Chief Counsel (Corporate)

cc: